

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOSH L. ANDERSON,)	
)	
Plaintiff)	
)	
v.)	
)	Civil Action No. 04-135 Erie
LARRY E. KOPKO, RANDY J. ICKERT)	
and KATIE L. AVENALI,)	
)	
Defendants)	JURY TRIAL DEMANDED

**DEFENDANTS' RESPONSE TO PLAINTIFF'S OBJECTION TO MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION**

Defendants Larry E. Kopko, Randy J. Ickert and Katie L. Smith, née Katie L. Avenali, respectfully submit the following Defendants' Response to Plaintiff's Objection to Magistrate Judge's Report and Recommendation.

1. On July 14, 2005 defendants filed a Motion to Dismiss and Strike in response to plaintiff's amended complaint (entitled "Complaint") filed on June 24, 2004, but never served on defendants and of whose contents defendants first became aware on June 6, 2005.

2. On December 12, 2005 the Magistrate Judge filed a Magistrate Judge's Report and Recommendation, recommending that the Motion to Dismiss and Strike be granted. On December 27, 2005 plaintiff filed Plaintiff's Objection to Magistrate Judge's Report and Recommendation and on January 4, 2005 defendants filed this Response and a supporting brief.

3. Defendants contend that the Magistrate Judge's Report and Recommendation should be accepted by the Court, and that the Court consequently should (a) strike the prayers for money damages in certain amounts on page 5 of the amended complaint, (b) strike the prayers for declaratory and injunctive relief appearing on pages 4 and 5 of the amended complaint and (c) dismiss defendants Kopko and Ickert from this action.

4. Defendants respectfully submit that the Court should take the actions described above for the following reasons:

- A. Plaintiff's claims of entitlement to certain dollar amounts of compensatory and punitive damages are in violation of W.D.PA.LR 8.1.
- B. Plaintiff's amended complaint fails to demonstrate a reasonable likelihood of recurrence of unlawful conduct by defendants.
- C. Plaintiff's amended complaint and the averments in his briefs do not allege the personal involvement of defendants Kopko and Ickert in the excessive force allegedly used on plaintiff by defendant Smith.

WHEREFORE, defendants Larry E. Kopko, Randy J. Ickert and Katie L. Smith, née Katie L. Avenali, respectfully request that the Court accept the Magistrate Judge's Report and Recommendation and grant defendants' Motion to Dismiss and Strike.

Respectfully submitted,

/s/ James T. Marnen
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Avenali

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 4th day of January, 2006, a copy of the within document was served on all counsel of record and unrepresented parties in accordance with the applicable rules of court.

/s/ James T. Marnen

James T. Marnen